North Dakota Law Review

Volume 68 | Number 1 Article 7

1992

Social Security and Public Welfare - Unemployment Compensation: What Factors Constitute Good Cause Attributable to the Employer When an Employee Leaves Employment Voluntarily

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SOCIAL SECURITY AND PUBLIC WELFARE— UNEMPLOYMENT COMPENSATION: WHAT FACTORS CONSTITUTE GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYER WHEN AN EMPLOYEE LEAVES EMPLOYMENT VOLUNTARILY?

Newland v. Job Service North Dakota, 460 N.W.2d 118 (N.D. 1990).

Joy Newland was employed as a utility clerk and order filler for one and one-half years by Dakota Drug, Inc., a wholesale company in Minot, North Dakota.[1] Newland's original work hours were from 7:30 a.m. to 4:30 p.m.[2] In January 1989, however, the company informed Newland that her shift would change to an irregular evening schedule with indefinite starting and ending times.[3] Although the new schedule did not involve an increase or decrease in hours, the time when Newland was to begin and end work each day was unpredictable.[4] Because Newland was unable to secure child care during the hours encompassed by her new work schedule, she quit her job and filed a claim for unemployment benefits with Job Service North Dakota.[5] Job Service denied benefits after determining that Newland quit her job for personal reasons that did not constitute "good cause attributable to her employer," which is a prerequisite to being entitled to benefits.[6]

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1. Newland v. Job Serv. N.D., 460 N.W.2d 118, 120 (N.D. 1990).

2. *Id.*

3. *Id.* Newland's new shift would be from at least 4:30 p.m. until 8:30 p.m. or later. *Id.* The shift change became effective February 26, 1989. *Id.*

4. *Id.* The beginning and ending times of the new shift would be dependant upon the amount of work to be done. *Id.*

5. *Id.* Newland's husband was employed on an evening shift and was therefore not available during that time to care for the couple's three children. *Id.* Upon being notified of the shift change, Joy Newland attempted to arrange for evening child care. Brief for Appellant at 1, Newland v. Job Serv. N.D., 460 N.W.2d 118 (N.D. 1990) (No. 890348) (available at the Thormodsgard Law Library) [hereinafter Brief for Appellant]. She was unable to find any child care providers in the small town of Burlington, North Dakota who would work evening hours. *Id.* Newland attempted to find other employment with both her employer and other businesses but was unsuccessful. *Id.* at 2.

North Dakota Century Code § 52-06-01 provides the required conditions for an unemployed individual to be eligible to receive benefits. N.D. CENT. CODE § 52-06-01 (1989). Generally, § 52-06-01 requires that the individual: (1) make a claim for benefits; (2) register for work at, and continue to report to an unemployment office; (3) be able to work, be available for suitable work and be actively seeking work; and (4) to have been unemployed for a waiting period of one week. *Id.*

6. *See Newland*, 460 N.W.2d at 120; N.D. CENT. CODE § 52-06-02 (1989 & Supp. 1991) (an individual is disqualified for benefits if he leaves employment voluntarily without "good cause attributable to the employer"). For the text of § 52-06-02, see *infra* note 47. The North Dakota Supreme Court has defined "attributable to the employer" to mean produced, caused, created or as a result of actions by the employer. *Newland*, 460 N.W.2d at 122.

In Newland's initial claim for unemployment benefits, the claims deputy allowed benefits on a finding that, because of the shift change, she had established good cause

The district court for Ward County, North Dakota, affirmed the decision of Job Service.[7] On appeal, the North Dakota Supreme Court reversed the district court and *held* that an employee's difficulty in obtaining child care due to a change from standard work hours to an on-call schedule with unpredictable hours may constitute good cause attributable to the employer if the employee makes a good faith effort to remain attached to the labor market.[8]

Unemployment compensation was introduced into the United States on a national basis in 1935.[9] The system, known as the Federal Unemployment Tax Act,[10] was a part of Franklin D. Roosevelt's New Deal legislation and was incorporated into the Internal Revenue Code.[11] The purpose of the unemployment compensation system during this era was twofold.[12] First, the money distributed through unemployment benefits was seen as a means of preventing a "downward economic spiral."[13] Second, the benefits were viewed as a means of providing some protection against the devastating impact of unemployment on the jobless worker.[14]

Today, the primary purpose of unemployment compensation

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attributable to her employer for quitting. Brief for Appellee, *supra* note 5, at 1. Following an appeal by her employer, Dakota Drug Co., a hearing was held. *Id.* The appeals referee affirmed the deputy's determination. *Id.* The employer appealed to Job Service North Dakota, which reversed the referee's decision on a finding that her reasons for leaving her position were not attributable to her employer. *Id.* at 1-2. The appeal board of Job Service North Dakota stated:

> Although parental obligations no doubt constitute good personal reasons for termination of employment, they lack the objective nexus with employment so as to constitute good cause attributable to the employer. It must be concluded that the claimant voluntarily left [her] most recent employment *without good cause attributable to the employer.*

Job Service North Dakota, Decision on Review, (No. JS 89-06) (May 2, 1989) (emphasis added).

7. Newland v. Job Serv. N.D., No. 59222 at 36 (D. Ct. N.D. Aug. 2, 1989). The district court, in affirming Job Service's decision, noted that the language of North Dakota Century Code § 52-06-02, is unambiguous. *Id.* For the text of § 52-06-02 see *infra* note 47. The court held that the statute could not be construed to allow unemployment compensation benefits to an employee who voluntarily leaves her job because of personal parental obligations. *Id.* Newland appealed the decision to the North Dakota Supreme Court. *Newland*, 460 N.W.2d at 120.

8. *Newland*, 460 N.W.2d at 120.

9. Social Security Act, ch. 531, 49 Stat. 620 (1935) (current version at 42 U.S.C. § 301 (1950)). Wisconsin, the only state with an unemployment compensation statute prior to the Social Security Act of 1935, adopted this social insurance measure in 1932. Eveline M. Burns, *Unemployment Compensation and Socio-Economic Objectives*, 55 YALE L.J. 1, 1 (1945).

10. I.R.C. §§ 3301-3311 (1988). The Federal Unemployment Tax Act is chapter 23 of U.S.C. Title 26. 26 U.S.C. § 23 (1988).

11. MATTHEW E. MADDEN, EMPLOYER'S COMPLETE GUIDE TO UNEMPLOYMENT COMPENSATION 1 (1979).

12. Burns, *supra* note 9, at 12.

13. *Id.*

14. *See id.*

is the same as it was during the New Deal era—to provide a "partial replacement of lost wages" to those persons who are jobless "*through no fault of their own.*"[15] Currently, every state has an unemployment insurance system to provide benefits to unemployed workers.[16]

Unemployment is a problem that creates serious social burdens and leads to economic insecurity.[17] The unemployment compensation system provides security by encouraging employers to provide more stable employment and to systematically accumulate funds during periods of employment in order to provide benefits to employees during periods of unemployment.[18]

While these unemployment systems give security to the unemployed worker, unemployment compensation statutes "embody the philosophy that compensation should be given only to those who are unemployed by virtue of some *involuntary* circumstance."[19] A problem arises, however, when economic reasons or family commitments force an employee to terminate his or her employment.[20] While these decisions to quit may be due to

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15. Peter S. Saucier & John A. Roberts, *Unemployment Compensation: A Growing Concern for Employers*, 9 EMPLOYEE REL. L.J. 594, 594 (1984).

16. *Id.* In North Dakota, the legislature has recognized that involuntary unemployment causes hardships for unemployed workers and, accordingly, has created an unemployment insurance system for workers who are jobless through no fault of their own. *See* N.D. CENT. CODE § 52-01 (1989 & Supp. 1991). North Dakota's statutory policy provides:

> Involuntary unemployment creates a hardship on the unemployed worker and his [or her] family and leads to a state of economic insecurity. Relief from problems of involuntary unemployment imposes a statewide burden of serious consequence to the people of the state of North Dakota which can best be met by unemployment insurance for the working man [or woman] who becomes unemployed through no fault of his [or her] own. The legislative assembly, therefore, declares that the public good and general welfare of the citizens of the state requires that for laboring people genuinely attached to the labor market there be a systematic and compulsory setting aside of financial reserves to be used as compensation for loss of wages during periods when they become unemployed through no fault of their own.

N.D. CENT. CODE § 52-01-05 (1989).

17. Newland v. Job Serv. N.D., 460 N.W.2d 118, 121 (N.D. 1990) (quoting N.D. CENT. CODE § 52-01-05 (1989)).

18. *See* MADDEN, *supra* note 11, at 2. *See generally* 76 AM. JUR. 2D, *Unemployment Compensation* § 5 (1975 & Supp. 1991) (discusses purposes of unemployment compensation statutes).

19. Debra E. Wax, Annotation, *Eligibility For Unemployment Compensation As Affected by Voluntary Resignation Because of Change of Location of Residence*, 21 A.L.R. 4th 317 (1983) (emphasis added).

20. *See* Snyder v. Commonwealth, Unemployment Compensation Bd. of Review, 387 A.2d 517, 519 (Pa. Commw. Ct. 1978) (the claimant who refused shift change assignment because of inability to secure care for her daughter voluntarily terminated employment as to be ineligible for unemployment compensation); Swanson v. Minneapolis-Honeywell Regulator Co., 61 N.W.2d 526, 531 (Minn. 1953) (holding the claimant unavailable for work and not qualified for unemployment benefits because she was unable to find early morning child care for her children).

necessity, they are generally still considered voluntary.[21] An example is the case of an employee who quits her job because her employer has changed her hours from a day shift to a second or third shift position, and she is unable to make child care arrangements during the later shift.[22] In some states, to terminate one's employment under these particular circumstances is not considered to be involuntary, and therefore, the employee is disqualified from receiving unemployment benefits.[23]

In *Gray v. Dobbs House, Inc.*,[24] an Indiana appellate court focused on the issue of whether parental obligations and shift changes constituted the work-connected "good cause" requirement.[25] In *Gray*, the claimant was employed as a cook and initially worked a 6:00 a.m. to 3:00 p.m. day shift.[26] With minimal notice, the claimant's employer assigned her to a 2:30 p.m. to 10:30 p.m. swing shift.[27] The claimant made an effort to work the new shift, but because of compelling child care obligations and difficulties with transportation, the claimant quit her job.[28] The claimant argued that child care obligations and transportation difficulties constituted "good cause" within the meaning of Indiana law, and consequently, she was not required to show "good cause in connection with the employer" for quitting her job.[29] The

21. Lyons v. Appeal Bd. of the Mich. Employment Sec. Comm'n, 108 N.W.2d 849, 857 (Mich. 1961) (commuting expenses and family obligations prohibited continuation of employment nearly 300 miles away); *see* Moya v. Employment Sec. Comm'n, 450 P.2d 925, 927 (N.M. 1969) (the claimant's responsibility to care for his grandmother during evening shift did not make evening work unsuitable within meaning of statute).

22. *Snyder*, 387 A.2d at 518; *see Swanson*, 61 N.W.2d at 528.

23. *See* MADDEN, *supra* note 11, at 174-78 (listing applicable state disqualifications). Under North Dakota law, unemployment benefits are withheld when the employee quits voluntarily and without good cause attributable to the employer. N.D. CENT. CODE § 52-06-02(1) (1989 & Supp. 1991).

24. 357 N.E.2d 900 (Ind. Ct. App. 1976).

25. Gray v. Dobbs House, Inc., 357 N.E.2d 900, 903 (Ind. Ct. App. 1976). Indiana Code §§ 22-4-14-1 to 14-4 provide the required conditions for an unemployed individual to be eligible to receive benefits. IND. CODE ANN. §§ 22-4-14-1 to 14-4 (Burns 1986 & Supp. 1991). Generally, §§ 22-4-14-1 to 14-4 require that the individual: (1) make a claim for benefits; (2) register for work at an unemployment office; (3) be able to work, be available for work and be making an effort to secure work; and (4) to have been unemployed for a waiting period of one week. *Id.* Indiana Code § 22-4-15-1 disqualifies an individual from benefits if he voluntarily leaves his employment "*without good cause in connection with the work.*" IND. CODE ANN. § 22-4-15-1 (Burns 1986 & Supp. 1991) (emphasis added). In addition, § 22-4-15-2 disqualifies an individual from receiving benefits if he or she "fails *without good cause*" to apply for or accept suitable work. IND. CODE ANN. § 22-4-15-2 (Burns 1986 & Supp. 1991) (emphasis added).

26. *Gray*, 357 N.E.2d at 902. The claimant, who did not own a car, was able to car pool with a fellow employee who worked the same shift. *Id.* She was also able to adequately arrange day care for her children while working this shift. *Id.*

27. *See id.*

28. *Id.*

29. *Gray*, 357 N.E.2d at 903. In *Gray*, the Review Board determined that the claimant had " 'possibly good personal reasons' " for quitting her job; however, those reasons were not found to be " 'good cause in connection with the work.' " *Id.* at 902. *See* IND. CODE

court noted, however, that the "good cause" requirement for rejecting offered employment was not intended by the legislature to have the same meaning as the "good cause in connection with the work" requirement for voluntarily quitting a job.[30] Accordingly, the *Gray* court held that while parental obligations may constitute "good cause" for refusal to accept work offered, such obligations do not constitute "good cause in connection with the work" for voluntarily quitting a job.[31]

A Florida District Court of Appeals, in *Beard v. State*,[32] joined the *Gray* court's position that voluntarily quitting employment based on difficulties in obtaining child care does not constitute "good cause attributable to [ones] employer."[33] The court noted that while other jurisdictions have held that child care obligations are "good cause" for refusing to accept employment, the "good cause" standard in the statutes of those states did not include the words "attributable to the employer" or "connected with the employment."[34] Although the court sympathized with the claim-

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ANN. §§ 22-4-15-1, 22-4-15-2 (Burns 1986 & Supp. 1991). *See also* Hacker v. Review Bd., 271 N.E.2d 191 (Ind. Ct. App. 1971). The *Hacker* court held that a woman involuntarily laid off when the night shift had been discontinued was entitled to benefits, even though she restricted the time she was available for work to the night shift. *Id.* at 195-97. The woman had four children under ten years of age at home, could not find child care at other times, registered each week for benefits, and made phone calls seeking employment. *Id.* at 196. The *Gray* court distinguished this case by noting that in *Hacker* the woman was involuntarily laid-off and was "available for work" despite her limited availability to the night shift. *Gray*, 357 N.E.2d at 903-04.

30. *Gray*, 357 N.E.2d at 904. The *Gray* court stated that parental obligations were no doubt good personal reasons for leaving a job, but they lacked the necessary nexus with employment. *Id.* at 903.

31. *Id.* "Good cause in connection with the work" and "good cause attributable to the employer" have essentially been defined by courts to have similar meanings. *Compare Gray*, 357 N.E.2d at 903 (defines "good cause in connection with the work" as good cause which must be "related to the employment") *with* Newland v. Job Serv. N.D., 460 N.W.2d 118, 122 (N.D. 1990) (" 'attributable to the employer' means 'produced, caused, created or as a result of actions by the employer' ") (quoting Couch v. North Carolina Emp. Sec. Comm'n, 366 S.E.2d 574, 577 (N.C. Ct. App. 1988)).

The claimant also argued that her reason for quitting was ' "in connection with the work" ' because the shift change was caused by the employer. *Gray*, 357 N.E.2d at 907. The court found, however, that the claimant had voluntarily terminated her employment because of domestic obligations and transportation problems and, therefore, refused to address the shift change issue. *Id.* at 908.

32. 369 So. 2d 382 (Fla. Dist. Ct. App. 1979).

33. Beard v. State, 369 So. 2d 382, 385 (Fla. Dist. Ct. App. 1979). The claimant, a correctional officer, was originally employed to work a 2:00 p.m. to midnight shift. *Id.* at 383. Seven months later she was assigned to an 8:30 a.m. to 4:30 p.m. shift. *Id.* With two days notice, the claimant's employer notified her that she would be assigned to the 11:45 p.m. to 7:45 a.m. shift. *Id.* Because she was unable to secure nighttime supervision for her children on such short notice, the claimant quit her job and filed a claim for unemployment compensation benefits. *Id.* Benefits were denied by the Unemployment Board because her resignation was not for " 'good cause attributable to the employer.' " *Id.*

For a discussion of claimants' refusal to work at certain times, see 76 AM. JUR. 2D *Unemployment Compensation* § 72 (1975 & Supp. 1991).

34. *Beard*, 369 So. 2d at 384-85. *E.g.*, Tung-Sol Elec., Inc. v. Board of Review, 114 A.2d 285 (N.J. Super. Ct. App. Div. 1955).

ant's position, it held that the legislature's intent for adding the phrase "attributable to the employer" to the good cause requirement for voluntary termination was to exclude domestic obligations, such as child care, from good cause for voluntary termination of employment.[35]

As the foregoing discussion demonstrates, courts have denied unemployment benefits to claimants who voluntarily quit employment due to conflicting child care obligations, by finding that the "good cause attributable to the employer" requirement has not been satisfied.[36] In addition, the majority of jurisdictions appear to hold that child care obligations do not constitute "good cause" for *refusing* employment and that a claimant may not limit his or her availability to a certain shift or period of time because of such obligations.[37] There are, however, a significant number of authoritites which recognize that family reasons may be sufficiently compelling to constitute good cause to limit work availability and yet leave the claimant sufficiently attached to the job market to retain eligibility for unemployment compensation benefits.[38]

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35. *Beard*, 369 So. 2d at 385. A similar position was taken by the Iowa Supreme Court in Pohlman v. Ertl Co., 374 N.W.2d 253 (Iowa 1985). The *Pohlman* court held that a claimant's difficulties in obtaining child care during an available shift did not constitute "good cause" to turn down a position. *Pohlman*, 374 N.W.2d at 256. Although the court rejected the claimant's difficulties in obtaining child care as constituting "good cause" to reject employment for the shift in question, the Iowa court did acknowledge that all child care cases could not be treated the same. *Id.* at 255. Realizing that the needs and demands of children and the particular circumstances of their parent's jobs will be greatly varied from case to case, the court noted that it would be impossible to create black letter rules that could apply in all cases. *Id.* The court explained further that in analyzing whether a claimant's rejection of employment for child care reasons constitutes "good cause," each case must be decided on its own merits. *Id. Compare* Yordmales v. Florida Indus. Comm'n, 158 So. 2d 791 (Fla. 1963) (holding that parent's refusal to work rotating hours was justified because of delinquency problems with children) *with* Sonterre v. Job Serv. N.D., 379 N.W.2d 281 (N.D. 1985) (holding that because there was no showing of any effort to secure child care, refusal of employment on child care grounds was not justified).

36. *E.g.*, Snyder v. Commonwealth, 387 A.2d 517, 519 (Pa. Commw. Ct. 1978); Gray v. Dobbs House, Inc. 357 N.E.2d 900, 903 (Ind. Ct. App. 1976); Beard v. State, 369 So. 2d 382, 385 (Fla. Dist. Ct. App. 1979).

37. *E.g.*, Ford Motor Co. v. Appeal Bd. of Mich. Unemployment Compensation Comm'n, 25 N.W.2d 586 (Mich. 1947). In *Ford Motor Co.* the Michigan Supreme Court analyzed the problem of an employee refusing employment due to family and child care obligations. *Id.* at 587. The claimant was employed by Ford Motor Co. as a bench hand on the afternoon shift and was laid off after one and one-half years of employment. *Id.* at 586. Several months after the claimant's lay-off she was recalled to work. *Id.* During the period of the lay-off, the claimant informed the unemployment compensation claims examiner that because of child care obligations, she was only available for the afternoon shift. *Id.* at 587. Focusing on statutory eligibility requirements, the *Ford Motor Co.* court held that a claimant who restricted her work hours to the afternoon shift in order to care for her children in the morning was not "available for work" as required by Michigan law and, consequently, was not eligible for unemployment compensation benefits. *Id.* at 589.

38. *E.g.*, Tung-Sol Elec., Inc. v. Board of Review, 114 A.2d 285, 288 (N.J. Super. Ct. App. Div. 1955); Yordmalis v. Florida Indus. Comm'n, 158 So. 2d 791, 792 (Fla. Dist. Ct. App. 1963); Hacker v. Review Bd., 271 N.E.2d 191, 196-97 (Ind. Ct. App. 1971); *In re*

For example, in *In re Watson*,[39] the North Carolina Supreme Court addressed the issue of whether refusal to work during a particular shift because of the inability to obtain child care disqualifies a claimant for unemployment benefits.[40] The court addressed the distinction between the definition of "good cause" for refusal of employment and "good cause attributable to the employer" for voluntarily quitting employment.[41] If one voluntarily terminates his employment, the court stated, his "good cause [must be] attributable to his employer," but if an unemployed person refuses to accept suitable work when offered, his reason need only be "good cause."[42] Thus, the court held that while the domestic obligations of the claimant cannot qualify as "good cause attributable to the employer," such obligations may qualify as "good cause" for refusal to accept work.[43]

In *Newland v. Job Service North Dakota*,[44] the North Dakota Supreme Court addressed the issue of whether an employee's difficulty in finding adequate child care due to a shift change from standard hours to an on-call schedule with unpredictable hours constitutes good cause attributable to the employer for quitting, if the employee makes a good faith effort to remain attached to the labor market.[45] The North Dakota Supreme Court began by

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Watson, 161 S.E.2d 1, 8-10 (N.C. 1968); *see* Ralph Altman & Virginia Lewis, *Limited Availability for Shift Employment: A Criterion of Eligibility for Unemployment Compensation*, 22 N.C. L. REV. 189 (1944); Louise F. Freeman, *Able to Work and Available for Work*, 55 YALE L.J. 123, 129-30 (1945); Arthur M. Menard, *Refusal of Suitable Work*, 55 YALE L.J. 134, 147 (1945).

39. 161 S.E.2d 1 (N.C. 1968).

40. *In re* Watson, 161 S.E.2d 1 (N.C. 1968). In *Watson*, a mother was laid off from the first shift and six weeks later was offered employment by the same employer on the second shift. *Id.* at 4. She refused to work on the second shift because she could not find suitable nighttime care for her son. *Id.* Her claim for unemployment benefits was denied when the examiner determined that her refusal to accept suitable employment was without good cause. *Id.*

41. *Id.* at 7. General Statutes of North Carolina § 96-14(1) disqualifies an individual for benefits if he leaves work without good cause attributable to the employer. N.C. GEN. STAT. § 96-14(1) (1991). In addition, § 96-14(3) disqualifies an individual from receiving benefits if he fails without good cause to either apply for available suitable work or accept suitable work that is offered to him. N.C. GEN. STAT. § 96-14(3) (1991). In *Watson*, the court noted that North Carolina's law concerning qualification for benefits provided that voluntary termination without "good cause attributable to the employer" disqualifies a claimant from receiving benefits. *Watson*, 161 S.E.2d at 7. Similarily, the *Watson* court held that the refusal to accept suitable employment without "good cause" constituted a similar disqualification. *Id.* North Dakota has similar statutes. *See, e.g.*, N.D. CENT. CODE § 52-06-02(1)(a) (1989 & Supp. 1991) (disqualifies an individual for benefits if he left his most recent employment "without good cause attributable to the employer"); N.D. CENT. CODE § 52-06-02(3) (1989 & Supp. 1991) (disqualifies an individual if he fails "without good cause" to apply for or accept suitable employment).

42. *Watson*, 161 S.E.2d at 7.

43. *Id.*

44. 460 N.W.2d 118 (N.D. 1990).

45. Newland v. Job Serv. N.D., 460 N.W.2d 118, 120 (N.D. 1990). On appeal, the North Dakota Supreme Court reviewed Job Service's decision to determine whether the decision

examining the North Dakota Unemployment Compensation Law.[46] The court focused initially on sections 52-01-05 and 52-06-02 of the North Dakota Century Code.[47] The court commented that North Dakota's public policy reason for such a social insurance program, as provided in section 52-01-05, is to alleviate the financial hardship of a worker facing involuntary unemployment.[48] The court noted further that under this statute, a worker is entitled to receive unemployment compensation benefits when the worker demonstrates a genuine commitment to being employed and becomes unemployed through no fault of his or her own.[49]

The court qualified the scope of the public policy reasons by noting that section 52-06-02 places limitations on the availability of unemployment benefits.[50] Under this statute, the court noted, an employer does not bear the responsibility of providing benefits to an employee who leaves for reasons unconnected to the employer.[51]

Because both statutes were related to the same subject matter, the court believed that the intent of the legislature would be best served by harmonizing them, if possible.[52] While recognizing

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was in accordance with applicable state law. *Id.* *See* N.D. CENT. CODE § 28-32-19 (1991). *See also* Erovick v. Job Serv. N.D., 409 N.W.2d 629, 630 (N.D. 1987) (supreme court looks to the record compiled by the agency and the decision made by the agency, and not to the decision of the district court when reviewing the administrative agency decision). For a brief discussion of the agency's decision, see *supra* note 5.

46. *See* N.D. CENT. CODE § 52-01 (1989 & Supp. 1991) (North Dakota Social Security statute).

47. *Newland*, 460 N.W.2d at 121. *See* N.D. CENT. CODE §§ 52-01-05, 52-02-06 (1989 & Supp. 1991). For the text of § 52-01-05, see *supra* note 16. Section 52-02-06, provides, in pertinent part:

> An individual is disqualified for benefits:
>
> 1. For the week in which he has left his most recent employment voluntarily *without good cause attributable to the employer*, and thereafter until such time as he:
>
> a. Can demonstrate that he has earned remuneration for personal services in employment equivalent to at least eight times his weekly benefit amount as determined under section 52-06-04; and
>
> b. Has not left his most recent employment under disqualifying circumstances.

N.D. CENT. CODE §§ 52-06-02(1)(a)-(b) (1989 & Supp. 1991) (emphasis added).

48. *Newland*, 460 N.W.2d at 121. For the text of § 52-01-05, see *supra* note 16.

49. *Newland*, 460 N.W.2d at 121. *See* Perske v. Job Serv. N.D., 336 N.W.2d 146, 148 (N.D. 1983).

50. *Newland*, 460 N.W.2d at 121. *See* N.D. CENT. CODE § 52-06-02 (1989 & Supp. 1991). For the relevant text of this statute, see *supra* note 47.

51. *Newland*, 460 N.W.2d at 121. *See* Lord v. Job Serv. N.D., 343 N.W.2d 92, 95-96 (N.D. 1984) (holding that employee's medical reasons for leaving a job were a result of working conditions and not his diabetic condition and thus was good cause attributable to the employer).

52. *Newland*, 460 N.W.2d at 121. The North Dakota court attempted to reconcile these two statutes by using the criteria it had previously adopted in Dickinson Pub. Sch. Dist. No. 1 v. Scott, 252 N.W.2d 216 (N.D. 1977). *Id.* The *Scott* court determined that statutes relating to the same subject matter should be construed together so as to

that the legislature's intent in enacting section 52-01-05 was to provide unemployment compensation to the worker who is sincere in his or her commitment to working, the court also believed that the legislature's intent with respect to section 52-06-02 was to protect employers whose employees quit for reasons not attributable to the employer or employment.[53] Noting the similarity of the statutes, the court concluded that the legislature intended to strike a balance between the goals of the statutes, and that both Job Service and the courts must take this balance into consideration when determining eligibility for benefits.[54] The court then concluded that, given the remedial purpose of unemployment compensation laws to alleviate the financial impact of unemployment on the worker, the balance should be weighted in the employee's favor.[55] Looking to public policy reasons supporting the unemployment compensation system, namely, that benefits should be provided to persons unemployed through no fault of their own, the court construed the provisions of section 52-01-05 in the worker's favor.[56]

Next, the *Newland* court addressed the issue of whether Newland's reasons for quitting her job were sufficient to warrant unemployment benefits.[57] Newland gave three reasons for quitting her job: "(1) a substantial change in work hours; (2) the unavailability of child care in her community after 7:00 p.m.; and (3) the prohibitive cost of child care."[58] The court emphasized that the adminis-

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harmonize them, if possible, to give full force and effect to legislative intent. *Id.* (citing Dickinson Pub. Sch. Dist. No. 1 v. Scott, 252 N.W.2d 216, 219 (N.D. 1977).

53. *Newland*, 460 N.W.2d at 121.

54. *Id.*

55. *Id. See, e.g.*, Holman v. Olsten Corp., 389 N.W.2d 236, 238 (Minn. Ct. App. 1986); McClain v. State Dept. of Indus. Rel., 405 So. 2d 34 (Ala. Civ. App. 1981); Osterhout v. Everett, 639 S.W.2d 539 (Ark. 1982). The court also considered older North Dakota case law which affirmed the position that a remedial statute must be liberally construed in favor of the purposes for which the statute was intended. *Newland*, 460 N.W.2d at 122 (citing Smith v. Huff, 127 N.W. 1047 (N.D. 1910)).

56. *Newland*, 460 N.W.2d at 122. *See* N.D. CENT. CODE § 52-01-05 (1989).

57. *Newland*, 460 N.W.2d at 122. Although the North Dakota Supreme Court enumerated three reasons for Newland's decision to terminate her employment, Newland's application for benefits listed only two reasons for terminating her employment: (1) unavailablity of evening child care; and (2) prohibitive cost of evening child care for her three children. Brief for Appellant, *supra* note 5, at 4. Regarding Newland's reason for quitting due to the prohibitive cost of child care, the court acknowledged that Job Service was justified in denying this as a valid reason for quitting. *Newland*, 460 N.W.2d at 122. *See* Sonterre v. Job Serv. N.D., 379 N.W.2d 281 (N.D. 1985) (parental obligations are not attributable to the employer). *See also* Lyell v. Labor & Indus. Rel. Comm'n, 553 S.W.2d 899, 901 (Mo. Ct. App. 1977); Gray v. Dobbs House, Inc., 357 N.E.2d 900, 903 (Ind. Ct. App. 1976); 81 C.J.S. *Social Security* § 230 (1977). The court noted that arranging for child care in order to work is an employee's responsibility. *Newland*, 460 N.W.2d at 122. *See generally* Pohlman v. Ertl Co., 374 N.W.2d 253, 255 (Iowa 1985) (the claimant's difficulties in child care arrangements for second shift position did not constitute "good cause" for refusing employment).

58. *Newland*, 460 N.W.2d at 122.

trative agency must consider *all* of the claimant's reasons for quitting before making a determination.[59] The court noted that unemployment compensation law does not require the claimant to base the decision to leave her employment on just one reason.[60] Accordingly, the court took the apparently unprecedented position that while child care alone may not "be a condition attributable to the employer, it may in combination with other factors constitute good cause for quitting attributable to the employer."[61] Thus, Job Service is now required to consider all reasons that may have combined to make a claimant quit employment.[62]

One reason given by Newland for quitting was the substantial shift change implemented by her employer.[63] Thus, the court addressed the issue of whether quitting a job because of a shift change constitutes good cause attributable to the employer.[64] The court noted that because a work schedule is produced, caused or created by the employer, any schedule change must be considered attributable to the employer.[65] Job Service argued that a change

59. *Id.* The court relied on Taylor v. Iowa Dept. of Job Serv., 362 N.W.2d 534 (Iowa 1985), which indicated that if the agency has been adequately informed of an employee's reasons for leaving employment, a claimant is entitled to have all reasons for quitting considered. *Taylor*, 362 N.W.2d at 539.

60. *Newland*, 460 N.W.2d at 122. Job Service argued that Sonterre v. Job Serv. N.D., 379 N.W.2d 281 (N.D. 1985), should govern the court's decision in this case. *Id.*

In *Sonterre*, the court was presented with a case involving similar problems of shift change and availability of child care. *Sonterre*, 379 N.W.2d at 284. Sonterre had been working for approximately five years when her employer notified her that there would be a change in hours from the 8:00 a.m. to 4:30 p.m. shift to the 10:00 a.m. to 6:30 p.m. shift and every third weekend. *Id.* She notified her employer of the objections to the change and requested that either her schedule remain the same or she be changed to the night shift. *Id.* The issue before the court was whether the claimant voluntarily left employment with good cause attributable to the employer. *Id.* Sonterre stated insufficient notice of the shift change and inability to find child care as her reasons for quitting her job. *Id.*

The *Newland* court noted that in *Sonterre*, Job Service had considered all three of the claimant's reasons for quitting but had determined that none of those reasons was attributable to the employer. *Newland*, 460 N.W.2d at 122. The *Newland* court also noted that the claimant in *Sonterre* was given ample notice of the shift change in order to arrange for child care, and therefore, her decision to quit was not for good cause attributable to the employer. *Id.* The *Newland* court pointed out, however, that the language in *Sonterre* would reasonably imply that if it was found that Sonterre's employer had given her an unreasonable notice resulting in her inability to make child care arrangements, thereby necessitating her decision to quit, her benefits may not have been denied. *Id.*

61. *Newland*, 460 N.W.2d at 122. The *Newland* court reiterated and adopted the rationale of the Iowa Supreme Court, which held that in a claim where several reasons for quitting are asserted, Job Service must use the following criteria: (1) "consider all reasons which may have combined to give the claimant good cause to quit" and (2) "then consider whether any of those reasons was a cause attributable to the employer." *Id.* (citing Taylor v. Iowa Dept. of Job Serv., 362 N.W.2d 534, 541 (Iowa 1985)).

62. *Id.* The court noted that it is necessary for an employee to show a good faith effort to remain employed and an inability to remain employed through no fault of her own. *Id.* *See* N.D. CENT. CODE § 52-01-05 (1989). The court defined fault to mean "failure to make reasonable efforts to preserve one's employment." *Newland*, 460 N.W.2d at 122.

63. *Newland*, 460 N.W.2d at 122-23.

64. *Id.*

65. *Id.* *See* Couch v. North Carolina Employment Sec. Comm'n, 366 S.E.2d 574, 577

in one's shift does not constitute good cause attributable to the employer unless the change involves a corresponding increase in the number of hours worked.[66] The *Newland* court recognized that "good cause [attributable to the employer]" had not been defined previously by the North Dakota court and applied the following definition: "[I]n the context of unemployment compensation, 'good cause [attributable to the employer is]' a reason for abandoning one's employment which would impel a reasonably prudent person to do so under the same or similar circumstances."[67]

The court acknowledged that a shift change that results in an increase in total hours constitutes good cause for quitting.[68] The court also stated that a decrease in hours and wages might give an employee a good cause for leaving.[69] The court noted, however, that even if the number of hours worked does not change, a *substantial* shift change may constitute good cause attributable to the employer.[70] The court stated further that if a shift change does not create an increase in total hours worked, then such a change must create a comparable burden to justify an employee's decision to leave.[71]

Newland's shift change involved a change from a regular 8:00 a.m. to 4:30 p.m. shift to one that would require being on-call from before 4:30 p.m. until after 8:30 p.m.[72] Considering the substantiality of this change, the court determined it to be good cause attributable to her employer for quitting, even though it resulted in no increase or decrease in hours.[73]

(N.C. Ct. App. 1988) (holding that "attributable to the employer" means "produced, caused, created or as a result of actions by the employer").

66. *Newland*, 460 N.W.2d at 123. *See* Montclair Nursing Center v. Wills, 371 N.W.2d 121, 125 (Neb. 1985) (an employer may change an employee's hours of employment, provided the shift change is not done for some improper purpose). *See also* Markert v. National Car Rental, 349 N.W.2d 859 (Minn. Ct. App. 1984); Cafolla v. Unemployment Compensation Bd. of Review, 362 A.2d 1148, 1150 (Pa. Commw. Ct. 1976).

67. *Newland*, 460 N.W.2d at 123 (citations omitted) (footnote omitted).

68. *Id.* (citing Sonterre v. Job Serv. N.D., 379 N.W.2d 281, 284 (N.D. 1985)). *See generally* 76 AM. JUR. 2D *Unemployment Compensation* § 59 (1975) (discusses voluntary abandonment of employment).

69. *Id. See, e.g.*, Tombigbee Lightweight Aggregate Corp. v. Roberts, 351 So. 2d 1388 (Ala. Civ. App. 1977); Kyle v. Beco Corp., 707 P.2d 378 (Idaho 1985); Tate v. Mississippi Employment Sec. Comm'n, 407 So. 2d 109 (Miss. 1981); Couch v. North Carolina Employment Sec. Comm'n, 366 S.E.2d 574 (N.C. Ct. App. 1988).

70. *Newland*, 460 N.W.2d at 123.

71. *Id.* at 124. *See, e.g.*, McDonald v. Lockwood, 424 So. 2d 356 (La. Ct. App. 1982).

72. *Newland*, 460 N.W.2d at 124. The court distinguished Newland's situation from that of the claimant in *Sonterre*. *Id.* In *Sonterre*, the claimant's new shift only required her to report to work two hours later in the morning and leave her job two hours later in the evening. *Sonterre*, 379 N.W.2d at 282.

73. *Newland*, 460 N.W.2d at 124.

After making this determination, the court addressed the final issue of whether Newland had made a good faith effort to preserve her employment by diligently attempting to find child care.[74] Because Job Service had not made any findings regarding Newland's efforts to secure child care or of the availability of evening child care in her community, the court reversed the trial court's order and remanded the case to Job Service for determination of these issues.[75] The court held that if it was found that such a good faith effort was made, benefits should be awarded.[76]

At the time unemployment compensation laws were adopted, there was little need to include family-related concerns in unemployment compensation legislation.[77] The spheres of work and home were kept separate. The typical American family consisted of a husband, a wife, and several children. The husband brought home the paycheck, while the wife remained at home and took care of the children. The structure of the American family is changing, however, and the distinctions between the home and work have become blurred. By 1988, sixty-five percent of all married women with children under eighteen were employed.[78] For these families, arrangements must be made for the care of the children. Additionally, there has been a significant increase in the number of single-parent households since 1980. In these families, the head of the household, usually a woman, has no choice but to work. Reliable, affordable child care becomes a necessity.

As more and more women enter the labor market, child care is becoming one of today's most widely debated social and political issues.[79] Awareness of the child care problem has spread dramatically, as is demonstrated by the amount of proposed child care legislation.[80] Employers in this country, on the whole, still do not play an active role in the care of their employee's children.[81] The

74. *Id.* Newland argued that she was unable to find available child care after 7:00 p.m. *Id.* The court distinguished this case from that in *Sonterre*, where the claimant did not attempt to make new child care arrangements but rather quit when notified of the shift change. *Id.*

75. *Id.* at 124-25.

76. *Id.* at 124.

77. *See supra* notes 10-18 and accompanying text.

78. Bureau of Labor Statistics, *Handbook of Labor Statistics*, 242 (1989).

79. Howard V. Hayghe, *Employers and Child Care: What Roles Do They Play?*, MONTHLY LABOR REV., Sept. 1988, at 38. As of 1987, 67% of all women with children under the age of 18 were in the workforce. Susan E. Shank, *Women and the Labor Market: The Link Grows Stronger*, MONTHLY LABOR REV., March 1988, at 6. In 1975, there were 13 million women with children in the job market. *Handbook of Labor Statistics, supra* note 78, at 240-41. By 1988, the number exceeded 20 million. Eight million had children under six years of age—too young to be in school during the day. *Id.*

80. Hayghe, *supra* note 79, at 38.

81. *Id.* As of 1987, only 11% of all companies employing 10 or more employees

unemployment laws of most states render a worker who puts family concerns ahead of his or her employment ineligible for unemployment benefits. The decision in *Newland v. Job Service North Dakota* shows a definite change in the North Dakota Supreme Court's attitude toward this topic. The case recognizes that child care in the United States is no longer just an employee concern but, rather, one the employer must also consider. Thus, the result reached in *Newland* may be an indication by the North Dakota Supreme Court of a general movement to accommodate the needs of the family within the framework of the unemployment compensation system. This decision by the North Dakota Supreme Court is proper in light of the increased role women with children are playing in the American labor force, a factor that was not an issue at the time unemployment compensation law was enacted.

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reported that they provided employer-sponsored day care, financial assistance toward it, or information and referral services to assist employees in securing child care. *Id.* at 39.